	Original	Prin
Proceedings in Court of Appeals of New York	37	2
Dissenting opinion, Van Voorhis, J.	37	2
Remittitur	39	2
Judgment on remittitur	43	2
Notice of appeal to the Supreme Court of the United States	46	2
Clerk's certificate (omitted in printing)	51	
Order noting probable jurisdiction	52	2

TRANSCRIPT

OF

RECORD

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 82

INTERNATIONAL HARVESTER CREDIT CORPORATION, ET AL., APPELLANTS

vs.

ALLEN J. GOODRICH, EDWARD H. BEST AND F. ROBERTS BLAIR, CONSTITUTING THE STATE TAX COMMISSION OF THE STATE OF NEW YORK.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED MAY 16, 1955.

JURISDICTION NOTED OCTOBER 10, 1955.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 82

INTERNATIONAL HARVESTER CREDIT CORPORATION, ET AL., APPELLANTS

vs.

ALLEN J. GOODRICH, EDWARD H. BEST AND F. ROBERTS BLAIR, CONSTITUTING THE STATE TAX COMMISSION OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

INDEX

	Original	Print
Record from Supreme Court of the State of New York, Appellate Division, Third Department	1	1
Submission and statement of facts	1	1
Parties	2	1
Carriers' liability	3	2
International	4	3
Brockway	5	4
Assertion of lien	6	4
International Massachusetts sale	7	5
Plaintiffs' contentions	9	6
Defendants' contentions	12	8
Stipulation waiving certification (omitted in printing)	19	
Notice of appeal	20	11
Decision	21	11
Opinion, Imrie, J.	22	12
Order	29	17
Stipulation of facts	32	18
Judgment	33	19
Stipulation waiving certification (omitted in printing)	35	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 18, 1955

4735-7

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION — THIRD DEPARTMENT

INTERNATIONAL HARVESTER CREDIT CORPORATION and BROCKWAY MOTOR COMPANY, INC., Plaintiffs,

against

ALLEN J. GOODRICH, EDWARD H. BEST and F. ROBERTS BLAIR,

Constituting the State Tax Commission of the State of New York, Defendants.

Submission and Statement of Facts—June 8, 1954

WHEREAS, the above named plaintiffs and defendants, the plaintiffs being corporations duly authorized to do business in the State of New York and the defendants, each being of full age, constituting the State Tax Commission of the State of New York, are parties to a question in difference which might be the subject of a special proceeding or an action and are desirous of submitting to the Supreme Court of the State of New York, Appellate Division, Third Department, the questions in dispute between them as hereinafter stated,

[fol. 2] NOW, THEREFORE, the above named plaintiffs and defendants do hereby agree upon the following case and submission containing a statement of the facts upon which the controversy between them depends, and do hereby submit the same to the above named Court for decision, as follows:

PARTIES

1. The plaintiff International Harvester Credit Corporation (hereinafter called International) is a foreign corporation duly incorporated under the laws of the State of Delaware, having its principal place of business in Chicago, Illinois, and is duly authorized to transact business in the State of New York.

2. The plaintiff Brockway Motor Company, Inc. (hereinafter called Brockway), is a domestic corporation duly

incorporated under the laws of the State of New York and has its principal place of business in Cortland, New York.

3. The defendant Allen J. Goodrich is the Commissioner of Taxation and Finance and a State Tax Commissioner of the State of New York and the defendants Edward H. Best and F. Roberts Blair are State Tax Commissioners of the State of New York, the three constituting the State Tax Commission of the State of New York, and are charged by law with the administration of Article 21 of the New York State Tax Law.

[fol. 3] CARRIERS' LIABILITY

4. Eastern Cartage and Leasing Co., Inc. (hereinafter called Eastern) is a domestic corporation duly incorporated under the laws of the State of New York and has its principal place of business in Schenectady, New York.

5. During the period between January 1952 and February 1954, Eastern was a carrier subject to the tax imposed by Article 21 of the Tax Law and owned at least fifteen motor vehicles as defined in said article which were operated on the public highways of this State.

6. During this period, by reason of such operation, Eastern incurred the following liability for taxes under this article:

a. For the period between January 1952 and June 1953, it filed incorrect returns and defendants duly assessed additional taxes in the amount of $2,407.70.

b. For the months of October and November 1953, it filed returns setting forth taxes due in the amount of $46.07 but failed to pay such taxes and assessments therefor were duly issued.

c. For the months of December 1953 and January 1954, it failed to file the required returns and defendants duly assessed taxes in the amount of $470.00.

d. For the month of February 1954 it failed to file the required return and defendants duly assessed taxes in the amount of $235.00.

[fol. 4] 7. The foregoing assessments of tax finally and conclusively fixed the tax due from Eastern since due notice

was given to it pursuant to Section 510 of the Tax Law and no application for revision was filed within 30 days of such notice.

8. Eastern is also liable for penalties and interest on said taxes in the amount of $539.27 up to April 21, 1954, and additional interest of 1% per month on $3,158.77 from April 21, 1954, making an aggregate liability for taxes, penalties and interest on April 21, 1954, of $3,698.04.

INTERNATIONAL

9. On March 17, 1953, International Harvester Company, a foreign corporation duly authorized to do business in the State of New York, sold to Eastern a certain Model L-205 International tractor, Serial Number 4805, Motor Number 17644 for $8,253.00.

10. Said Eastern, as part of the purchase price, duly executed and delivered to the seller a valid conditional sales agreement, covering the said vehicle for $6,541.00 and said conditional sales agreement was duly assigned to the plaintiff International. Said conditional sales agreement was duly filed, according to law, in the office of the Clerk of the Town of Rotterdam, Schenectady County, N. Y.

11. Said motor vehicle was subject to the provisions of Article 21 of the Tax Law. Eastern obtained the permit and plate required by said article for such motor vehicle which was operated on the public highways of this State. [fol. 5] 12. Said Eastern defaulted in making payments under the said conditional sales contract and on January 22, 1954, there was due and owing to plaintiff International under its conditional sales contract the sum of $4,578.79.

13. Said vehicle was duly replevied from Eastern by notice given January 22, 1954, and was duly repossessed by plaintiff International on January 26, 1954, and was duly sold at public sale on February 16, 1954.

14. Plaintiff International duly bid in the said vehicle at the public sale for $3,500.00.

15. On March 17, 1954, the said vehicle was sold by plaintiff International to Philomena Colafemina, 1732 State Street, Schenectady, New York, for $5,500.00 and said plaintiff warranted to said purchaser that it had a right to sell said vehicle and that it was free from any charge or encumbrance.

BROCKWAY —

16. Plaintiff Brockway on August 27, 1953, sold to Eastern a certain Model 154-WH-11 Brockway tractor, Serial Number 49634, Motor Number 46B4733 for $7,257.00.

17. Said Eastern, as part of the purchase price, duly executed and delivered to plaintiff Brockway a valid conditional sales agreement, covering the said vehicle, for $6,757.00. Said conditional sales agreement was duly filed according to law in the office of the Clerk of the Town of Rotterdam, Schenectady County, N. Y.

[fol. 6] 18. Said motor vehicle was subject to the provisions of Article 21 of the Tax Law. Eastern obtained the permit and plate required by said article for such motor vehicle which was operated on the public highways of this State.

19. Said Eastern defaulted in making payments under the said conditional sales contract and on March 26, 1954, there was due and owing to plaintiff Brockway under its conditional sales contract the sum of $5,625.00.

20. Said vehicle was duly repossessed by plaintiff Brockway from Eastern on March 26, 1954, and is still in the possesison of plaintiff Brockway. The value of such vehicle at that time did not exceed $5,625.00.

ASSERTION OF LIEN

21. On or about April 21, 1954, defendant asserted that a lien attached to each of the aforementioned motor vehicles in the amount of $3,698.04.

22. The amount of said lien asserted against each of the said motor vehicles includes all taxes, penalties and interest due from Eastern including (a) taxes incurred as a result of the operation of the three motor vehicles purchased from the respective plaintiffs as herein set forth, (b) taxes incurred as a result of the operation of other motor vehicles purchased from the respective plaintiffs and from others, (c) taxes for periods both prior and subsequent to the purchase of the aforesaid motor vehicles by Eastern from the plaintiffs, (d) taxes for periods prior to the repossession of said motor vehicles by plaintiffs which were [fol. 7] assessed prior to such repossession, (e) taxes for periods prior to the repossession of said motor vehicles

by plaintiffs which were assessed subsequent to such repossession, and (4) taxes for periods subsequent to the repossession of said motor vehicles by plaintiff International.

23. In lieu of seizing said motor vehicles, each of the plaintiffs was afforded an opportunity to obtain a release of the lien by filing a bond to secure the taxes due from Eastern.

24. The value of the aforementioned motor vehicles was in excess of $3,698.04 and each of the plaintiffs, to prevent the seizure of said vehicles and to insure their marketability, furnished a commercial bond, under protest, in the amount of $3,698.04, the full amount of the tax, penalties and interest assessed against Eastern, for the purpose of securing said taxes, penalties and interest pending a determination of the validity and extent of said lien and its priority, if any, over the plaintiffs' conditional sales contracts.

INTERNATIONAL MASSACHUSETTS SALE

25. On February 19, 1953, International Harvester Company, a foreign corporation duly authorized to do business in the State of New York, sold to Eastern a certain Model L-205 International tractor, Serial Number 4801, Motor Number 15553 for $8,253.00.

26. Said Eastern, as part of the purchase price, duly executed and delivered to the seller a valid conditional [fol. 8] sales agreement, covering the said vehicle, for $6,541.00 and said conditional sales agreement was duly assigned to the plaintiff International. Said conditional sales agreement was duly filed, according to law, in the office of the Clerk of the Town of Rotterdam, Schenectady County, New York.

27. Said motor vehicle was subject to the provisions of Article 21 of the Tax Law. Eastern obtained the permit and plate required by said article for such motor vehicle which was operated on the public highways of this State.

28. Said Eastern defaulted in making payments under the said conditional sales contract and on January 22, 1954, there was due and owing to plaintiff International under its conditional sales contract the sum of $4,578.79.

29. Said vehicle was duly replevied from Eastern by

notice given January 22, 1954, and was duly repossessed by plaintiff International on January 26, 1954, and was duly sold at public sale on February 16, 1954.

30. Plaintiff International duly bid in the said vehicle at the public sale for the amount of $3,500.00.

31. On March 17, 1954, the said vehicle was sold by plaintiff International to Bowe Oil, Inc., 99 Holland Avenue, Adams, Massachusetts, for $4,300.00. Bowe Oil, Inc., is a foreign corporation not authorized to do business in the State of New York. Said vehicle is not now and has not since March 17, 1954, been operated in this State.

32. Defendants assert that the aforesaid lien for taxes, penalties and interest due from Eastern attached to the [fol. 9] proceeds received by plaintiff International from said sale.

PLAINTIFF'S CONTENTIONS

33. Article 21, and in particular Section 506, of the Tax Law of the State of New York violates the United States Constitution and the New York State Constitution and is therefore invalid and unenforceable against these plaintiffs to the extent that it purports to make their interests, as conditional vendors, in said vehicles subordinate to the subsequently arising lien of the State for highway use fees, taxes, penalties and interest assessed and accruing against the operating carrier. The creation of such a priority and its enforcement against plaintiffs' interests, constitutes a taking of said interest to pay the personal obligation of the conditional vendee, which said taking is an arbitrary and unjustifiable deprivation of plaintiffs' property without due proces of law, contrary to the provisions of Amendment 14 of the United States Constitution and Article I, Section 6 of the Constitution of the State of New York.

34. Article 21, and in particular Section 506, of the Tax Law of the State of New York is invalid and unenforceable against these plaintiffs under Amendment 14 of the United States Constitution and Article I, Section 6, of the New York Constitution, to the extent that it purports to subordinate the interests of plaintiffs, as conditional vendors, in said vehicles to the State's lien for all fees, taxes, penalties and interest assessed or accruing against the operating carrier under Article 21, without regard to

[fol. 10] the origin of such liabilities or the identity of the vehicle whose use created such liability. The creation of such a priority and its enforcement against plaintiffs' interests constitute a taking of plaintiffs' property which cannot be justified by reference to a tax imposed upon the carrier, or upon any other grounds, and which, therefore, must be considered a deprivation of plaintiffs' property without due process of law.

35. Article 21, and in particular Section 506, of the Tax Law of the State of New York is invalid and unenforceable against these plaintiffs under Amendment 14 of the United States Constitution and Article I, Section 6, of the New York State Constitution to the extent that it purports to subordinate the interests of the plaintiffs, as conditional vendors, in said vehicles to the State's lien for fees, taxes, penalties and interest assessed or accruing against the operating carrier prior to the creation of carrier's interest in said vehicles or the use of said vehicles on the highways of the State. The creation and enforcement of such a priority is arbitrary and unjustifiable and reprives plaintiffs of their property without due process of law.

36. Article 21, and in particular Section 506, of the Tax Law of the State of New York is invalid and unenforceable against these plaintiffs under Amendment 14 of the United States Constitution and Article I, Section 6, of the New York State Constitution to the extent that it purports to subordinate the interest of the plaintiffs, as conditional vendors, in said vehicles to the State's lien for fees, taxes, penalties and interest assessed or accruing against the operating carrier after the date when the plaintiffs re-[fol. 11] possessed said vehicles from the vendee or carrier. The creation and enforcement of such a priority is arbitrary and unjustifiable and takes plaintiffs' property to pay the personal obligation of the vendee or carrier. Such action on the part of the State and its officers deprives plaintiffs of their property without due process of law.

37. Article 21 of the Tax Law of the State of New York is invalid and unenforceable against plaintiffs in that the procedure provided therein for the accrual, assessment, determination and enforcement of the highway use tax, and

the fees, penalties and interest incidental thereto, fail to give plaintiffs a fair, adequate and timely notice and hearing as to such matters, thereby permitting plaintiffs' interest in said vehicles, as conditional vendors, to be taken from them without a reasonable opportunity to be heard, and depriving plaintiffs of their property without due process of law, contrary to the provisions of Amendment 14 of the United States Constitution and Article I, Section 6, of the New York State Constitution.

38. Article 21, and in particular Section 506, of the Tax Law of the State of New York is invalid and unenforceable against plaintiffs in that it denies plaintiffs the equal protection of the laws, in violation of Amendment 14 of the United States Constitution in that the tax lien liability of plaintiffs' security interest in said vehicles, or any other vehicle they might sell to a carrier operating within New York, is determined, according to a classification based on factors with no relevance to the plaintiffs or their security interests. The method of measuring the tax lien is such that similarly situated security interests may be sub-[fol. 12] ject to liens in different amounts without reasonable basis for the discrimination.

39. Article 21 of the Tax Law of the State of New York is invalid as to these plaintiffs in that it violates Amendment 14 of the United States Constitution and Article I, Section 6, of the New York State Constitution by creating an irrebutable presumption that plaintiffs, as conditional vendors, consented that their vehicles might be used on the highways of New York and that they should be subject to the liability imposed upon them by the Tax Law. The taking of plaintiffs' property under the authority of such a presumption deprives plaintiffs of such property without due process of law.

Defendants' Contentions

40. Defendants contend that, pursuant to Article 21 of the Tax Law, a lien of the State for taxes, penalties and interest due under said Article attached to each of the aforementioned motor vehicles of Eastern as soon as it was operated on the public highways of this State.

41. Defendants further contend that said lien attached to

each of the aforementioned motor vehicles, in the amount of $3,698.04, and is paramount to any liens of plaintiffs thereof by reason of their conditional sales agreements.

42. Defendants further contend that the motor vehicle repossessed by plaintiff Brockway and still in its possession, is subject to the aforesaid lien of the State.

43. Defendants further contend that the motor vehicle repossessed by plaintiff International and sold to Philo- [fol. 13] mena Colafemina, is subject to the aforesaid lien of the State.

44. Defendants further contend that the proceeds of the sale of the motor vehicle by plaintiff International to Bowe Oil, Inc., is subject to the aforesaid lien of the State.

45. Defendants further contend that the provisions of Section 506 of the Tax Law and the attachment of the lien thereunder to each of the aforesaid motor vehicles and to the proceeds of the motor vehicle sold by plaintiff International to Bowe Oil, Inc., does not violate any provisions of the Constitution of the United States or of the Constitution of the State of New York.

WHEREFORE, the parties plaintiff and defendants above named pray the decision and judgment of this Honorable Court upon all and singular the matter in difference and the controversy between them above stated.

The judgment asked for by the plaintiffs is:

1. That the alleged liens asserted by the defendants be declared secondary and subordinate to the conditional sales contracts held by the plaintiffs and that the bonds filed by the plaintiffs to secure the payment of such liens be forthwith cancelled and returned to the plaintiffs.

2. A declaratory judgment by this Court that the provisions of Article 21 of the Tax Law are unconstitutional under Article I, Section 6, of the Constitution of the State of New York and Amendment 14 of the United States Constitution insofar as they purport to establish any lien prior or paramount to the inter- [fol. 14] ests held by the plaintiffs in such motor vehicles.

The judgment asked for by defendants is that the liens asserted by the defendants under Article 21 of the Tax Law for the full amount of taxes, penalties and interest due from Eastern be declared to have attached to each motor vehicle of Eastern and to be prior and paramount to any lien of plaintiffs on such motor vehicles under their conditional sales agreements and that defendants recover judgment on account of such lien against the plaintiffs in the sum of $3,698.04 with interest on $3,158.77 at 1% per month from April 21, 1954.

The parties further agree that the Court shall render such judgment as shall be proper on the above facts without costs to either party.

It is hereby stipulated and agreed that the foregoing facts are the facts upon which this controversy is founded; that the controversy be determined by the Supreme Court, Appellate Division, Third Department; that the said Court shall render judgment thereon, and that this submission and all the papers herein shall be filed with the Clerk of Albany County.

Dated, June 8, 1954.

Brockway Motor Company, Inc., International Harvester Credit Corporation, Plaintiffs, by F. B. Mattingly (Seal).

[fol. 15] State Tax Commission, Defendant, by Allen J. Goodrich, President, State Tax Commission; by F. Roberts Blair, State Tax Commissioner.

DeGraff, Foy, Conway and Holt-Harris, Attorneys for Plaintiffs, 11 North Pearl Street, Albany, New York; Nathaniel L. Goldstein, Attorney for Defendant, State Capitol, Albany, New York.

[fols. 16-18] *Duly sworn to by Allen J. Goodrich and F. B. Mattingly. Jurats omitted in printing.*

[fol. 19] STIPULATION WAIVING CERTIFICATION (omitted in printing)

[fol. 20] IN THE SUPREME COURT—COUNTY OF ALBANY

NOTICE OF APPEAL—August 12, 1954

SIRS:

Take notice that the plaintiffs hereby appeal to the Court of Appeals from the order of the Appellate Division, Third Department, entered in the office of the Clerk of the Appellate Division, Third Department, on the 9th day of August, 1954, and from the judgment entered thereon in the office of the Clerk of the County of Albany on the 10th day of August 1954, and from each and every part of said order and judgment.

This appeal is taken as of right, pursuant to Section 588, Subdivision 1 of the Civil Practice Act, on the ground that there is directly involved the construction of the Constitution of the State and of the United States.

Dated: Albany, N. Y., August 12, 1954.

Yours, etc., DeGraff, Foy, Conway and Holt-Harris, Attorneys for Plaintiffs-Appellants, Office and Post Office Address, 11 North Pearl Street, Albany, New York.

To: Clerk of the County of Albany and Nathaniel L. Goldstein, Esq., Attorney General of the State of New York, Attorney for Defendants-Respondents.

[fol. 21] IN THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION—THIRD DEPARTMENT

DECISION

Judgment granted to the defendants according to the submission, except as to taxes accrued after re-possession of the respective trucks by the plaintiffs, without costs.

Settle the form of judgment on notice.

Opinion by Imrie, J.

Foster, P.J., Bergan and Halpern, JJ., concur.

Coon, J., not voting.

[fol. 22] IN THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION—THIRD DEPARTMENT

OPINION—JULY 8, 1954

Argued May Term, 1954.
Decided July 8, 1954.

Before Hon. Sydney F. Foster, Presiding Justice, Hon. Francis Bergan, Hon. William H. Coon, Hon. Philip Halpern, Hon. Daniel F. Imrie, Associate Justices

Submission of a controversy on an agreed statement of facts pursuant to Section 546 of the Civil Practice Act concerning constitutional validity of the paramount lien provisions of Section 506 of the Tax Law enacted to secure the payment of the Highway Use Tax imposed by Article 21 thereof.

DeGraff, Foy, Conway and Holt-Harris (John T. DeGraff, Ralph D. Semerad and John J. Kelly, Jr., of Counsel), Attorneys for Plaintiffs, 11 North Pearl Street, Albany, New York.

Nathaniel L. Goldstein (Wendell P. Brown, Solicitor General, John C. Crary, Jr., and Robert W. Bush, Assistant Attorneys General, of Counsel), Attorney General, Attorney for Defendants, State Capitol, Albany New York.

[fol. 23] IMRIE, J.:

The parties have submitted this controversy upon a stipulated statement of facts pursuant to Section 546 of the Civil Practices Act. Plaintiffs ask for judgment that the tax lien priority asserted by defendants under Article 21 of the Tax Law (Highway Use Tax Law) be declared unconstitutional and invalid, and that certain bonds filed by them, under protest, to secure payment of such liens be cancelled and returned.

In 1953 International Harvester Company and Brockway Motor Company, Inc., sold three tractors to Eastern Cartage and Leasing Company, Inc. (herein referred to as Eastern), a carrier subject to the tax imposed by Article 21. The carrier owned at least fifteen motor vehicles as defined in the article. In each sale the vendor took a valid conditional sales agreement as a portion of the purchase price. Each vehicle became subject to Article 21.

The conditional sales agreements pertaining to the two sales by International Harvester Company were duly assigned to plaintiff International. Plaintiff Brockway held the sales agreement taken by it. Eastern defaulted in making payments on all of the contracts and the several tractors were repossessed.

About April 21, 1954, defendants asserted that a lien in the amount of $3,698.04 attached to each of the three motor vehicles above mentioned. Such lien included all unpaid taxes, penalties and interest due from Eastern, including, in addition to taxes incurred as the result of the operation of those three vehicles, (a) taxes incurred by Eastern as the result of the operation of other vehicles purchased from plaintiffs and other vendors, (b) taxes for periods [fol. 24] both prior and subsequent to the purchase of the three specified vehicles from these plaintiffs, (c) taxes for periods prior to plaintiffs' repossession of the three assessed prior to the repossession, (d) taxes for periods prior to repossession assessed after such repossession, and (e) taxes subsequent to the repossession of the vehicles by International. The Brockway truck remained in the possession of that company. International sold its tractors to third parties. Plaintiffs have been permitted to file bonds to obtain the release of the trucks from the liens.

This court affirmed the validity of Article 21 in *Mid-States Freight Lines, Inc.* v. *Bates* (279 App. Div. 451, aff'd. without opinion, 304 N. Y. 700, cert. den., 345 U. S. 908). This controversy involves the application of the lien priority imposed by section 506 thereof.

Section 505 requires every subject carrier to file with the tax commissioner "on or before the twentieth day of each month a return for the preceding calendar month during which any vehicular unit was operated in this state * * *." Section 506 directs that each carrier shall pay the required tax at the time of filing the return and provides that "The fees, taxes, penalties and interest accruing under this article shall constitute a lien upon all motor vehicles and vehicular units of such carrier. The lien shall attach at the time of operation of any motor vehicle or vehicular unit of such carrier within this state and shall remain effective until the fees, taxes, penalties and interest are paid,

or the motor vehicle or vehicular unit is sold for the payment thereof. Such liens shall be paramount to all prior liens or encumbrances of any character and to the rights [fol. 25] of any holder of the legal title in or to any such motor vehicle or vehicular unit."

The sum of plaintiffs' contention is that such lien priority denies them the equal protection of the law, subordinates their liens, and takes their property without due process unreasonably and arbitrarily. They assert that this is done to satisfy Eastern's tax obligation to pay for highway use by its other vehicles, which includes the tax obligation which had accrued before Eastern purchased and used plaintiff's vehicles and a similar obligation accruing after the repossession of the vehicles by plaintiffs. We believe that the basic issue here is, as defendants argue, whether the State may secure its prerogative right to the payments of its taxes by making that right paramount to plaintiffs' security for their private debts. The other matters discussed relate themselves to that issue.

The prerogative right of priority of payments of debts due it from an insolvent over those due private creditors exists in the State as the successor of the Crown. The common law gave the king such preference. By virtue of our 1777 Constitution that part of the common law continued to be the law of this State. Later Constitutions have, in effect, retained that provision. The priority arises and exists independently of statute. (*Matter of Carnegie Trust Company*, 206 N. Y. 390, 396, 397; *Matter of Grunér*, 295 N. Y. 510, 522, 523; *Marshall v. New York*, 254 U. S. 380, 382-384.) "The only changes of the right made by statute have been by way of enlarging its scope in certain cases. Thus, while by the common law of England * * * the priority does not obtain over a specific lien created by the debtor before the sovereign undertakes to enforce its right, the legislature of [fol. 26] New York extended the prerogative right, so as to give certain taxes priority over prior encumbrances. An extension of this nature is found in Section 197 of the Tax Law * * *. By reason of that provision the annual franchise tax takes priority over encumbrances on the corporate property." (*Marshall v. New York, supra*, pp. 383, 384.)

The power to declare the lien of the tax paramount to all

prior liens and encumbrances and to the rights of a holder of the legal title of the motor vehicle is beyond question. It is not unreasonable or arbitrary to fix upon the carrier's motor vehicles as subject of the lien. That provision is a corollary to and a necessary implementation of the mechanics of a fundamental right of priority.

The tax is imposed on the carrier as he avails himself of the use of the State's highways. It is determined by the extent of that use, irrespective of the number of trucks employed. If he fails to pay the tax, recourse may be had to his property, a common and recognized procedure. Sound reason justifies the method of enforcing the payment of the tax adopted in this statute. It could well happen that trucks constitute the sole tangible resources of a carrier. The nature of the ownership and possession of trucks is transient. It would be neither safe, practicable nor reasonable to apportion the lien of an unpaid tax on the basis of each of several vehicles' actual use of the higliway. Such a prorating or subdivision is no more to be expected than where a state seeks to collect an income tax from a nonresident by enforcing payment of the tax and considering his property and business interests in the state as a single [fol. 27] entity in order to enforce payment of the tax by lien thereon. (*Shaffer* v. *Carter*, 252 U. S. 37, 59.) In that case, adverting to the probability of changes in the units of the individual taxpayer's property and business, Mr. Justice Pitney said, "The entire jurisdiction of the state over appellant's property and business and the income he derives from them * * * is a jurisdiction in rem; and we are clear that the state acted within its lawful power in treating his property interests and business as having *both unity and continuity.*" (Emphasis supplied.)

Plaintiffs' contention of the invalidity of the statute because it has no provision for notice of assessment of tax deficiencies and provides for seizure and sale of vehicles without notice (Section 511, Subd. 3) to parties situated as are plaintiffs ties into their criticism of the statutory secrecy accorded returns required by the statute (Section 514).

As a basic proposition, every presumption is in favor of the validity of a statute. The tax imposed by Article 21 has been determined to be a valid tax. (*Hid-States*

Freight Lines, Inc., v. Bates, supra.) The power of the State to establish priority for tax debts due it cannot be questioned. Entire exactitude in the application of taxes, while a desirable goal, cannot always be attained. Here the plaintiffs point out dire possibilities of unequal exactions. On the record before us we cannot say that the plaintiffs' trucks constitute the sole fund from which Eastern's tax liability may be satisfied in the event Eastern cannot pay its own debt. It does not indicate whether the lien of the tax has been asserted against other motor vehicles of Eastern. It does not indicate that Eastern is insolvent or in receivership, though that might be a reasonable assumption. [fol. 28] In any event the unconstitutionality of a law is not to be determined solely on the ground that some hardship may result from its application. (*New York Rapid Transit Corp. v. City of New York*, 275 N. Y. 258, 265, 266.) In measuring its validity it is not reasonable to assume that the tax authorities will enforce it in such a manner as to produce uncalled for hardship or inequity. Conversely, Mr. Justice Holmes has said (*Gast Realty & Investment Company v. Schneider Granite Company*, 240 U.S. 55, 58, 59), "But * * * if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact."

The parties are in proper agreement in one respect. The law does not bar a conditional vendor from repossessing a motor vehicle subject to the State's lien or impose a lien on such a chattel for taxes accruing after its repossession.

It is urged that the assertion of the paramount lien will raise obstacles to the widespread commercial dealings in motor trucks. That is not sufficient to divest the State of the exercise of its power. Some of the problems suggested by plaintiffs in this respect related to the "secrecy" proceedings could be solved by administrative action or by suitable legislation for furnishing information of tax liabilities and amounts thereof to persons dealing in trucks.

Judgment should be granted to defendants in accordance

with the submission, except as to taxes accrued after repossession of the respective trucks by the plaintiffs, without costs.

[fol. 29] IN THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION—THIRD DEPARTMENT

ORDER

The parties above named having submitted this controversy upon a case containing an agreed statement of facts, pursuant to Sections 546-548 of the Civil Practice Act, and said submission, duly executed and acknowledged, having been filed in the office of the Clerk of Albany County on the 15th day of June 1961 and the cause having duly come on to be heard before this Court,

Now, after hearing John T. McGraff, Esq., of counsel for the plaintiffs, and John C. Crary, Jr., Assistant Attorney General, of counsel for the defendants, and due deliberation having been had thereon, it is, on motion of Nathaniel L. Goldstein, Attorney General, attorney for defendants,

Ordered (Mr. Justice Coon not voting) that judgment be, and the same hereby is, granted to the defendants according to the submission, except as to taxes accrued after repossession of the respective trucks by the plaintiffs, without costs.

[fol. 30] The Court finds the facts as stated in the agreed statement of facts and, upon said statement and the stipulation of the attorneys for the respective parties, annexed hereto, further finds that all of the liability for unpaid highway use taxes, in the total amount of $3,158.77, exclusive of interest and penalties, for which liens involved in this submission were asserted by defendants, accrued before repossession by the plaintiff Brockway Motor Company, Inc., of the truck sold by said plaintiff on conditional sale and that $2,884.61 of said tax liability accrued before repossession of the two trucks sold by International Harvester Company under contracts of conditional sale assigned to the plaintiff International Harvester Credit Corporation; it is further

Ordered that judgment be entered hereon by the Clerk of the County of Albany, declaring that the lien asserted by the defendants under Article 21 of the Tax Law for taxes, penalties and interest due from Eastern Cartage and Leasing Company, Inc., attached to the vehicles sold to said Eastern by the plaintiffs, except as to taxes accruing after repossession of said vehicles, and became valid prior and paramount liens superior to any lien of plaintiffs on such motor vehicles under their conditional sale agreements to the extent of $3,698.04 with respect to the vehicle sold by the plaintiff Brockway Motor Company, Inc., together with interest at 1% per month from April 21, 1954 on $3,158.77 and to the extent of $3,409.78 with respect to the vehicles repossessed by the plaintiff International Harvester Credit Corporation, together with interest at 1% per month from April 21, 1954 on $2,884.61; and further adjudging that the [fol. 31] defendants recover from the plaintiffs on account of such lien the amount of unpaid taxes, penalties and interest in the sum of $3,698.04, with interest on $3,158.77 at 1% a month from April 21, 1954 as against the plaintiff Brockway Motor Company, Inc., and in the sum of $3,409.78, with interest on $2,884.61 at 1% a month from April 21, 1954, as against the plaintiff International Harvester Credit Corporation, without costs.

John S. Herrick, Clerk.

[fol. 32] In the Supreme Court of New York Appellate Division—Third Department.

Stipulation of Facts—August 8, 1954.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the highway use taxes involved in this submission to the extent of $2,884.61 had accrued against Eastern Cartage and Leasing Company, Inc., before repossession on January 26, 1954 of the two vehicles by the plaintiff International Harvester Credit Corporation and that the amount of penalties and interest owing on account thereof on April 21, 1954 was $525.17, making a total of $3,409.78; and it is further stipulated and agreed that all the tax liability for which the lien was asserted by defendants had accrued prior to repos-

session of the vehicle by the plaintiff Brockway Motor Company, Inc.

Dated: August 8, 1954.

DeGraff, Foy, Conway and Holt-Harris, Attorneys for Plaintiffs. Nathaniel L. Goldstein, Attorney General, Attorney for Defendants.

[fol. 33] IN THE SUPREME COURT OF NEW YORK, COUNTY OF ALBANY

JUDGMENT—August 10, 1954

The parties above named having submitted this controversy upon a case containing an agreed statement of facts, pursuant to Sections 546-548 of the Civil Practice Act, and said submission, duly executed and acknowledged, having been filed in the office of the Clerk of Albany County on the 15th day of June, 1954 and the cause having duly come on to be heard in the Appellate Division of the Supreme Court, Third Judicial Department and having been argued by John T. DeGraff, Esq., of counsel for the Plaintiffs; and John C. Crary, Jr., Assistant Attorney General, of counsel for the defendants, and the Court, after due deliberation, having rendered its unanimous decision (Mr. Justice Coon, not voting) and entered its order thereon directing judgment as hereinafter stated, in the office of the Clerk of said Appellate Division, on the 9th day of August, 1954.

Now, upon reading and filing a certified copy of said order, together with the original case upon which the submission was heard, and upon motion of Nathaniel L. Goldstein, Attorney General, attorney for defendants, it is

Adjudged and Declared that the lien asserted by the defendants under Article 21 of the Tax Law for taxes, penalties and interest due from Eastern Cartage and Leasing Company, Inc., attached to the vehicles sold to said Eastern Cartage and Leasing Company, Inc., except as to taxes accruing after repossession of said vehicles, and became valid prior and paramount liens superior to any lien of plaintiffs on such motor vehicles under their conditional sale

[fol. 34] agreements to the extent of $3,698.04 with respect to the vehicle sold by the plaintiff Brockway Motor Company, Inc., together with interest at 1% per month from April 21, 1954 on $3,158.77 and to the extent of $3,409.78 with respect to the vehicles repossessed by the plaintiff International Harvester Credit Corporation, together with interest at 1% per month from April 21, 1954 on $2,884.61, and it is

Adjudged that the defendants recover from the plaintiffs on account of such lien the amount of unpaid taxes, penalties and interest in the sum of $3,698.04, with interest on $3,158.77 at 1% a month from April 21, 1954 as against the plaintiff Brockway Motor Company, Inc., and in the sum of $3,409.78, with interest on $2,884.61 at 1% a month from April 21, 1954, as against the plaintiff International Harvester Credit Corporation, without costs.

Judgment signed and entered this 10th day of August, 1954.

(S.) Donald L. Lynch, Clerk.

[fols. 35-36] Stipulation Waiving Certification—(Omitted in Printing)

[fol. 37] In the Court of Appeals, State of New York

No. 250

International Harvester Credit Corporation & ano., Appellants

vs.

Allen J. Goodrich, & ors., constituting the State Tax Commission of the State of New York, Respondents

Opinion

Van Voorhis, J. (dissenting):

As conditional vendors of commercial motor vehicles, appellants' property in these vehicles has been destroyed through subordination to accumulated highway use taxes (Article 21 of the Tax Law accruing with reference to other

vehicles owned and operated by the conditional vendee, in many instances prior to delivery to the vendee of appellants' automotive equipment. Appellants could not have ascertained the tax liabilities of the vendee prior to sale, even if the books of the State Tax Commission had been open to them, inasmuch as the vendee had filed incorrect tax returns. A similar situation existed during the periods of time while appellants' motor vehicles were in the possession of the conditional vendee. Highway use taxes accruing with respect to the vehicles sold by appellants can be given priority over appellants' property interests in those vehicles, but it seems to me to constitute deprivation of property without due process of law and denial of the equal protection of the laws, to subject the recognized property interest of a conditional vendor to taxes which have accrued against the conditional vendee without reference to these vehicles, and in substantial part, before they were delivered to the conditional vendee or even manufactured. In voting to modify the judgment appealed from in these respects, I do not imply that some of the objects of this part of [fol. 38] Article 21 of the Tax Law could not be realized by legislation giving effect to legitimate property rights of conditional vendors under such circumstances.

* * * * * * *

Judgment affirmed. No opinion; all concur except Van Voorhis, J., who dissents in an opinion.

* * * * * * *

[fol. 39] In the Court of Appeals, State of New York

Remittitur—December 31, 1954.

[fol. 40] No. 250.

International Harvester Credit Corporation & Ano., appellants

vs.

Allen J. Goodrich, & Ors., Constituting the State Tax Commission of the State of New York, respondents

Be It Remembered, That on the 25th day of August in the year of our Lord one thousand nine hundred and fifty-four,

International Harvester Credit Corporation & ano., the appellants in this cause, came here unto the Court of Appeals, by DeGraff, Foy, Conway & Holt-Harris, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Allen J. Goodrich, & ors., constituting the State Tax Commission of the State of New York, the respondents in said cause, afterwards appeared in said Court of Appeals by Nathaniel L. Goldstein, Attorney General.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. John T. DeGraff, of counsel for the appellants, and by Mr. Henry S. Manley, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the [fols. 41-42] Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, Third Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division, before Justices thereof, &c.

(S.) Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, December 31, 1954

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Raymond J. Cannon, Clerk.

[fol. 43] IN THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT

INTERNATIONAL HARVESTER CREDIT CORPORATION AND BROCKWAY MOTOR COMPANY, PLAINTIFFS-APPELLANTS

against

ALLEN J. GOODRICH, EDWARD H. BEST AND F. ROBERTS BLAIR, CONSTITUTING THE STATE TAX COMMISSION OF THE STATE OF NEW YORK, DEFENDANTS-RESPONDENTS

JUDGMENT ON REMITTITUR—Jan. 10, 1955

The plaintiffs above named having appealed to the Court of Appeals from an order of the Appellate Division, Third Judicial Department entered in the Office of the Clerk of the Appellate Division, Third Judicial Department on the 9th day of August, 1954, directing judgment in favor of respondents in the above-entitled action instituted upon a submission of controversy, and from the judgment duly entered thereon in the Office of the C[illegible]k of the County of Albany on the 10th day of August, 1954, and the appeal having been duly argued before said Court of Appeals, and after due deliberation had thereon, and the Court of Appeals having made its decision, and by its remittitur dated December 31, 1954 having ordered and adjudged that the judgment of the Appellate Division of the Supreme Court so appealed from be affirmed, and having further ordered that the proceedings herein be remitted to the Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law;

[fols. 44-45] Now, on reading and filing the remittitur from the Court of Appeals herein, and upon motion of Jacob K.

Javits, Attorney General of the State of New York, Attorney for the above-named Respondents, it is;

Ordered that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court.

John S. Herrick, Clerk.

(Seal)

A true copy, John S. Herrick, Clerk, Ent. 1-12-55.

[fol. 46] In the Supreme Court of the State of New York, Appellate Division—Third Department

(Title omitted)

Notice of Appeal to the Supreme Court of the United States

I. Notice is hereby given that the International Harvester Credit Corporation, and Brockway Motor Company, Inc., the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of affirmance entered by the Court of Appeals of the State of New York in this action on December 31, 1954. This appeal is taken pursuant to 28 U. S. C. 1257 (2).

II. The Clerk will please prepare the entire transcript of the record in this cause, including this Notice of Appeal, for transmission to the Clerk of the Supreme Court of the United States.

III. The following questions are presented by this appeal:

Whether the lien provisions of Article 21 of the New York Tax Law, as applied to appellants, are arbitrary, unreason-
[fol. 47] able and discriminatory, contrary to the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

DeGraff, Foy, Conway and Holt-Harris, Attorneys for International Harvester Credit Corporation, and Brockway Motor Company, Inc., Appellants.

[fols. 48-50] AFFIDAVITS OF SERVICE OF NOTICE OF APPEAL (omitted in Printing)

[fol. 51] Clerk's Certificate to foregoing Record omitted in printing.

[fol. 52] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1955

No. 82.

INTERNATIONAL HARVESTER CREDIT CORPORATION ET AL., Appellants,

vs.

ALLEN J. GOODRICH ET AL., Constituting the State Tax Commission of the State of New York

Appeal from the Court of Appeals of the State of New York.

ORDER NOTING PROBABLE JURISDICTION—October 10, 1955

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.